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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/488,390	01/19/2000	David M. Tumey	06 2916.001	4399

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EXAMINER
BALI, VIKKRAM

ART UNIT	PAPER NUMBER
2623	9

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/488,390	Applicant(s) TUMEY ET AL.	
	Examiner Vikkram Bali	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 May 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *3,4,5* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

The restriction is withdrawn in view of arguments filled by the applicant in response filled 5/15/2003. Action follows:

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5 and 13-16 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "space defined by said doll" in claim 5 is a relative term which renders the claim indefinite. The term "space defined by said doll" is not defined by the claim, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is not clear by the claim how the doll as claimed can defined the space for the processor.

The term "signal" in claims 13-15 is a relative term which renders the claim indefinite. The term "signal" is not defined by the claim, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term signal in claimed one two many times in the claim 13 and the dependent claims 14-15 that it is

not clear by the claims that which signal [i.e. facial recognition or the sound] is to be consider in the claims.

Claim 16 is dependent claim and therefore is also rejected.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 8, 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Lu (US 4858000).

With respect to claim 1, Lu discloses an entertainment device (see col. 3, lines 22-25, a television device); an acquisition device...to acquire a representation of a facial characteristics of an object...and adapted to produce a signal, (see figure 3, numerical 28 a camera for taking pictures of the individuals, as they are watching TV, i.e. "in proximity", see col. 3, lines 61-68, and provides the video images signal see col. 4, lines 1-4); a processor associated with ...to compare the produce signal ... indicative of recognition, (see figure 6, numerical 98, 100, and 112, and col. 3, lines 57-61, the characteristic potion is the face of the individuals watching TV) as claimed.

Claims 8, 9 and 11 are rejected for the same reasons as set forth for the rejection of claim 1, because claims 8, 9 and 11 are claiming subject matter similar to claim 1 and the subject matter is also described in the rejection of claim 1.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 2-6, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Diamond et al (US 5314336).

With respect to claim 2, Lu discloses the invention substantially as disclose and as describe above in claim 1. However, he fails to disclose the entertainment device is a toy, as claimed. Diamond discloses a Toy that recognizes the marked. It would have been obvious to one ordinary skilled in the art at the time of invention to combine the recognition system of Lu and the teaching of Diamond of having a toy with a marking recognition by simply replacing the TV by a Toy. The motivation of doing this is simply to recognize the individuals that are playing with the toys.

With respect to claim 3, Diamond further discloses the doll, and the acquisition device is mounted to the doll, (see the figure 1, the doll and the figure 4, the numerical 45 detector is on the doll) as claimed.

With respect to claim 4, Diamond further teaches the toy is a doll, (see figure 1, the doll) and the acquisition device see what's in front of eye, (see figure 4). And, Lu further discloses that the acquisition device is a camera (see figure 3, numerical 28).

With respect to claim 5 as best understood, Lu discloses the processor (see rejection for claim 1), and diamond teaches the space ...by said doll, (see figure 1, the electronics for the recognition marking is with in the doll) as claimed.

With respect to claim 6, Diamond further teaches the toy is a doll, (see figure 1, the doll) and the acquisition device see what's in front of eye, (see figure 4). And, Lu

further discloses that the acquisition device is a camera (see figure 3, numerical 28). And, it is well known in the art that the doll could very well be the Barbie, Mickey, Teddy, Pokeman, Tom, Jerry, Barnie, Bob or like. Therefore, it is obvious to one ordinary skilled in the art at the time of invention to take any one of the dolls as the preference of the kids at the time.

Claim 12 is rejected for the same reasons as set forth for the rejection of claim 2, because claim 12 is claiming subject matter similar to claim 2.

6. Claims 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu (US 4858000).

With respect to claim 7, Lu discloses the invention substantially as disclose and as describe above in claim 1. However, he fails to disclose the entertainment device is a video game, as claimed. But, it is well known to one that the TV can be use to play the video games, and therefore, the TV could very well be the video game. Therefore, one ordinary skilled in the art at the time of invention can simply utilize the TV as the video game and incorporate the Lu's recognition system into the video game to simply recognize who is playing the video game.

With respect to claim 10 it is well known in the art to use the Artificial Intelligence to in to the recognition systems for the comparison purpose. Therefore, it obvious to one ordinary skilled in the art at the time of invention to use the well known feature of

Artificial Intelligence in to the Lu's recognition system as it is known to give better results.

7. Claims 13-16 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Diamond as applied to claim 12 above, and further in view of Arad et al (US 5281143).

With respect to claims 13-15, Lu and Diamond discloses the invention substantially as disclose and as describe above in claim 12. However, they fail to disclose the features of sound controls and the sound control toys having the speech synthesizer as claimed in claims 13-15. Arad discloses a Learning toy having a speech synthesizer and a speaker and the toy responds to the speech as the toy speech detection detects (see col. 32, lines 35-40, lines 55-68, col. 4, lines 13-17, col. 5, lines 14-22 and lines 34-39) as claimed. It would have been obvious to one ordinary skilled in the art at the time of invention to combine the Arad's teaching to the Lu's and Diamond's toy recognition system to come up with a combination toy that will recognize the face and the speech of the individual playing with it.

With respect to claim 16, it is well known to use software in the CPU having the email provision. Therefore, at the time of invention, for an ordinary skilled in the art, it is obvious to combine the well-known feature of email provision in the CPU, to get and send out the information regarding the games.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vikkram Bali whose telephone number is 703.305.4510. The examiner can normally be reached on 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amelia Au can be reached on 703.308.6604. The fax phone numbers for the organization where this application or proceeding is assigned are 703.872.9314 for regular communications and 703.872.9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.306.0377.

Vikkram Bali
Examiner
Art Unit 2623

vb
July 11, 2003